

PART 2063 - EMPLOYEE RELATIONS AND SERVICES

SUBPART L - Administrative Grievance Procedure

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Part 2063 - EMPLOYEE RELATIONS AND SERVICES

SUBPART L - Administrative Grievance Systems

§ 2063.1 Purpose.

The purpose of this section is to set forth Rural Development procedures for filing and consideration of employee grievances. This system gives employees an opportunity to present grievances and to seek a resolution. It incorporates and supplements Chapter 771 of the Department Personnel Manual (DPM).

§ 2063.2 Definitions. Specialized terms applicable to the Administrative Grievance System are defined as follows:

Agency Head. For the purpose of the grievance procedure for Rural Development, the Agency Head is the Under Secretary. The Deputy Administrator for Operations and Management may issue grievance decisions for the Agency Head where the grievant did not request fact-finding or where the Grievance Examiner's recommended decision is accepted in full. However, where the Grievance Examiner's recommendation is not accepted or more relief is granted than recommended, these decisions must be signed by the Under Secretary.

Alternative Dispute Resolution (ADR). A series of problem solving tools used to assist in the resolution of conflicts between people or organizations. Examples of ADR techniques include mediation, neutral evaluation, and ombudsperson.

Bargaining Unit Employee. An employee included in an appropriate exclusive bargaining unit as determined by the Federal Labor Relations Authority for which a labor organization has been granted exclusive recognition.

Fact-finder or Agency Grievance Examiner. A person appointed to conduct appropriate inquiry into a formal grievance and recommend a decision on the issue(s) of the grievance.

Grievance. A request by an employee or a group of employees, acting as individuals, for personal relief in a matter of concern or dissatisfaction which is subject to the control of agency management.

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Grievance File. A file established expressly for the purpose of creating and preserving a record of all documents and evidence pertinent to a grievance. This includes, but is not limited to, letters and memoranda generated by the person filing the grievance and by the involved supervisors, statements of witnesses and official records and documents upon which the proposed and final dispositions of the grievance are based. The grievance file may not contain any document or item not made available to the grievant for review prior to a final decision on the grievance.

Personal Relief. A specific remedy directly benefiting the grievant(s). A request for disciplinary action against another employee is not a request for personal relief. Failure to request personal relief in a grievance may be grounds for rejection of the grievance.

§ 2063.3 Delegations of Authority. Authority to resolve a grievance is delegated to the lowest level individual that can make a decision on the matter being resolved.

§ 2063.4 Administrative Grievance Coverage. The following describes the employees and the subject matter covered by these procedures.

- (a) Employee coverage. This grievance system applies to all non-bargaining unit employees of Rural Development and to all bargaining unit employees not covered by a negotiated grievance procedure.
- (b) Employees excluded from coverage. This grievance system excludes from coverage all applicants for employment; all bargaining unit employees covered by a negotiated agreement; and all members of the Foreign Service of the United States covered under the Foreign Service Grievance System as defined by the Foreign Service Act of 1980.
- (c) Subject matter coverage. The administrative grievance system applies to any matter of concern or dissatisfaction relating to the employment of an employee that is subject to the control of management, including but not limited to:
 - (1) Improper application of or failure to follow rules and regulations.
 - (2) Prohibited Personnel Practices except discrimination based on race, religion, national origin etc., (covered by the Equal Employment Opportunity (EEO) Complaint System).

§ 2063.4(c) (Con.)

- (3) Performance appraisals (except for a Summary Rating of Results Achieved).
 - (4) Nonselection for training.
 - (5) Suspension from duty without pay for fourteen (14) calendar days or less and letters of reprimand.
 - (6) Changes in assignments including details and reassignments.
 - (7) Allegations of partisan political discrimination.
- (d) Subject matter excluded. The Administrative Grievance System does not apply to:
- (1) Separation of employees serving under Schedule A, Schedule B, or Schedule C appointments.
 - (2) The content of published Agency procedures and policy.
 - (3) Matters appealable to the Equal Employment Opportunity Commission (EEOC), Merit Systems Protection Board (MSPB), Office of Personnel Management (OPM), the Federal Labor Relations Authority, or the Comptroller General. Such decisions include but are not limited to:
 - (i) Adverse action, except suspension of 14 days or less;
 - (ii) Denial of a Within-Grade Salary Increase;
 - (iii) Position classification action;
 - (iv) Allegations or complaint or discrimination or sexual harassment;
 - (v) Reduction-In-Force action;
 - (vi) Violation of re-employment priority rights;
 - (vii) Violation of re-employment or reinstatement rights;
 - (viii) Violation of military restoration rights;
 - (ix) Salary-retention decision;

- (x) Fitness-for-duty examination;
 - (xi) Life insurance decision; and
 - (xii) Health benefits decision.
- (4) Nonselection for promotion or lateral reassignment from a group of properly ranked and certified candidates or failure to receive a noncompetitive promotion.
- (5) A preliminary warning notice of an action which, if effected, would be covered or excluded from coverage under the grievance system.
- (6) An action that terminates a temporary or term promotion and returns the employee to the position from which the employee was temporarily promoted or to a different position (not lower in grade) when the employee is informed in advance that the promotion is only temporary.
- (7) Return of an officer or employee from the Senior Executive Service to the General Schedule during the one (1) year period of probation or for less than fully successful executive performance.
- (8) The substance of the critical element and performance standards of an employee's position.
- (9) Performance appraisal of a member of the Senior Executive Service, per 5 U.S.C. 4312 (d).
- (10) Return of an employee from an initial appointment as a supervisor or manager to a non-supervisory or non-managerial position for failure to satisfactorily complete the probationary period.
- (11) Termination of a probationer for unsatisfactory performance or misconduct.
- (12) Reassignment of a Senior Executive Service (SES) employee after the employee receives an unsatisfactory rating or SES or Senior level pay rate changes.

§ 2063.4(d) (Con.)

(13) Granting, or failure to grant, receipt or failure to receive an employee performance award or a quality salary increase. Adoption or failure to adopt an employee suggestion.

(14) The termination of an SES career appointee during probation for unsatisfactory performance.

(15) Actions taken in accordance with terms of a formal agreement voluntarily entered into by an employee.

(16) Recruitment or relocation bonuses, retention allowances, supervisory differentials, critical position pay, or dual compensation waivers.

(17) Any action taken under 32 U.S.C. 709 (e) involving National Guard Technicians, and

(18) Any additional exclusions as requested by the Agencies and approved by the Department.

§ 2063.5 General Provisions.

(a) Representation. Employees are entitled to be accompanied, represented, and advised at any stage of a grievance by a representative of their choice who has been designated in writing. The representative chosen by an employee may be disallowed if the Agency determines the representative would:

- (1) Be in a conflict of interest or position;
- (2) Be required to perform other work to meet priority needs of the Agency; or
- (3) Create unreasonable costs for the Government.

(b) Disallowance of representation. An employee may request review of any disallowance of a representative by the Director, Appeals and Grievances Staff, Office of Human Resources Management, USDA, who will make a final decision in the matter. This review should be requested in writing within seven (7) days of the receipt of the disallowance.

(c) Official time. The grieving employee and his or her representative shall be granted a reasonable amount of official time, not to exceed eight (8) hours, to prepare and present the grievance. The reasonable amount of official time shall be determined at the discretion of the employee's supervisor.

(d) Informal resolution. Nothing shall prohibit reasonable attempts by managers to resolve, at any time, a grievance that is being processed. Informal resolutions are encouraged at any stage of the process. The employee may withdraw the formal grievance for any reason by notifying, in writing, the official who is considering the grievance. Any successful resolution or withdrawal of the grievance shall be in writing and communicated to the official who is then considering the grievance.

(e) ADR Process. An employee may request the ADR process be used to resolve employment-related disputes prior to or in connection with the administrative grievance process. He or she may contact their servicing personnel office for information on the ADR process.

(f) EEO Complaints, MSPB, Federal Labor Relations Authority, or OPM Appeals.

(1) To avoid dual processing, a dispute over a matter for which an employee has an entitlement to file an appeal or formally challenge in some other forum will be rejected under the Administrative Grievance System. The grievance may be reinstated if the grievance issues are not addressed during the appeal process or any other forum.

(2) The official considering the formal grievance shall inform the grievant that the grievance is being rejected and return the grievance to the grievant.

(g) Cancellation.

(1) A formal grievance may be cancelled/rejected at any step of the grievance process by the considering official if:

(i) No relief can be granted because of the separation of the grievant.

(ii) The relief requested by the grievant is granted.

§ 2063.5(g)(1) (con.)

(iii) The matter is raised in another forum in addition to the Administrative Grievance System.

(iv) Any other action or circumstance results in there being no other basis for other retroactive relief.

(2) The cancellation/rejection of a grievance must:

(i) Be communicated to the grievant, in writing.

(ii) Advise the grievant of the right to have the cancellation reviewed by the Director, Appeals and Grievances Staff, Office of Human Resources Management, USDA.

(h) Freedom from Reprisal. Grievants and their representatives shall be free from restraint, coercion, intimidation, or reprisal in presenting a grievance. Allegations of these actions may, at the option of the grievant, be handled according to either of the following:

(1) Added immediately to the grievance being presented for review.

(2) Submitted directly to the Director, Appeals and Grievances Staff, Office of Human Resources Management, USDA.

(i) Attorney Fees. Employees may request payment of attorney fees in cases where back pay is awarded and the employee's representative otherwise meets the requirements for attorney fees as provided in 5 CFR 550. Fees are not payable under any other circumstances.

§ 2063.6 Informal Grievance Procedure.

An employee, who has a grievance, shall present the matter as an informal grievance to the lowest level individual who can make a decision on the matter being grieved.

(a) If this individual is unknown to the employee, the grievance shall be submitted to the employee's immediate supervisor.

(b) For all grievances from field office personnel in the states, the State Director will be the informal grievance official on all grievances.

(c) An informal grievance must be presented in writing. No particular form or format is required.

(d) It is the employee's responsibility to identify the matter of concern, the corrective action sought, and clearly identify that he or she is initiating the grievance process.

§ 2063.7 Processing Grievances under the Informal Procedures.

(a) Time Limit for Presentation. An employee shall present an informal grievance within fifteen (15) calendar days after either of the following:

(1) The date of the act of occurrence that is the basis for the grievance.

(2) The date he or she became aware of (or should have been aware of) the act or occurrence.

(b) Waiver of Informal Process. The informal grievance procedure shall be waived and a formal grievance may be filed in the case of a suspension of fourteen (14) days or less. In this situation, an employee may file a formal grievance within fifteen (15) days of the effective date of the suspension.

(c) Resolution.

(1) The individual receiving the informal grievance shall determine whether he or she has the authority to resolve the grievance. If the individual does not have the authority to resolve the grievance, the individual shall forward the grievance to the proper level where the grievance can be resolved and inform the grievant of this action.

(2) The official who has the authority to resolve the informal grievance shall make a determination as to whether it is possible to resolve the informal grievance.

(3) If the informal grievance cannot be resolved, the official who is considering the grievance shall prepare a memorandum to the grievant that includes:

§ 2063.7(c)(3) (con.)

- (i) The grievance issues.
 - (ii) The attempts to resolve the grievance issues.
 - (iii) The termination of the informal grievance process.
 - (iv) The right to file a formal grievance.
 - (v) That a formal grievance may be filed with the supervisor of the official who considered the informal grievance (second level supervisor).
 - (vi) The ten (10) calendar-day time limit in which a formal grievance should be filed.
 - (vii) That the grievant may elevate the grievance to the Director, Appeals and Grievances Staff, Office of Human Resources Management, if the grievance action is not completed within 90 calendar days after initiating the informal grievance.
- (4) The informal process must be completed by issuing a memorandum or resolution of the grievance within twenty (20) calendar days after its initial presentation. If this deadline is not met, the employee may file a formal grievance.
- (5) The informal grievance should be addressed whether or not it is presented within the time limit, although it may be rejected for untimeliness (at the first or second stage) as a formal grievance.

§ 2063.8 Formal Grievance Procedure.

- (a) Filing and Acceptance. All formal grievances shall be filed by submitting the grievance in writing, to the supervisor of the official who considered the informal grievance (generally the second level supervisor of the grievant where the first line supervisor heard the informal grievance). However, for grievances where the State Director is always the first level (informal grievance) official, the formal grievance official will be the Assistant Administrator for Human Resources.
- (b) Process of accepting or rejecting grievance. The second level supervisor shall inform the employee of acceptance of the formal grievance or reject it as:

- (1) Untimely.
- (2) A matter excluded from coverage.
- (3) Not meeting a requirement for processing.
- (4) A matter not presented as a part of the informal grievance, except as specified in Section 2063-L.4 (h).
- (5) A matter excluded from coverage because it was filed by an employee excluded from coverage.

(c) Second level supervisor responsibilities. The second level supervisor shall send a copy of the formal grievance to the Employee Relations Staff, within five (5) calendar days after receiving the formal grievance.

(d) Request for a review of rejection of grievance. Within seven (7) calendar days after receipt of a rejection of a grievance the employee may request a review of the rejection by the Director, Appeals and Grievances Staff, Office of Human Resources Management, USDA.

(e) Form. A formal grievance must be submitted in writing. To be acceptable as a grievance, it must be signed by the employee or the designated representative; state the issue of the grievance, and specify the corrective action being sought.

(f) Time Limit for Filing. A formal grievance must be filed within ten (10) calendar days after receiving either of the following:

- (1) The memorandum closing the informal process.
- (2) Notification of the ten (10) calendar-day time limit.

§ 2063.9 Processing Grievances under the Formal Procedures.

(a) Grievance Examination. If a grievance is accepted, a representative will be designated to review and attempt to resolve the grievance. This will normally be a member of the Employee Relations Staff. A proposed disposition will be issued which will:

§ 2063.9(a) (con.)

- (1) Include reasons for any determination on the grievance.
- (2) Specify what corrective actions, if any, are to be implemented.
- (3) Notify the grievant of:
 - (i) The right to a final decision by the Agency Head if the matter has not been resolved to the employee's satisfaction.
 - (ii) The ten (10) calendar-day limit to request a final decision.
 - (iii) The need to indicate which matters are unresolved, the corrective action being sought, and any additional arguments and evidence the grievant wishes to have considered.
 - (iv) The fact that new issues may not be raised as a part of the grievance at this time.
 - (v) The Agency's intention to close out the grievance with no further action if the employee does not submit a request for further review within the allotted timeframe, and that the proposed disposition will become the Agency's final decision on the grievance.

(b) Grievance File Availability. All of the material and information on which the proposed disposition is based shall be provided to the grievant or an authorized representative along with the proposed disposition, if not provided previously.

(c) Referral to USDA Grievance Examiner. If the formal grievance is not resolved to the satisfaction of the grievant, the grievant may request to elevate the grievance with or without fact-finding within 10 calendar days after receiving the proposed disposition. The Agency will promptly refer one copy of the grievance file containing all documents considered by the agency and the grievant's request, to the Director, Appeals and Grievances Staff, Office of Human Resources Management, USDA, for assignment to a Grievance Examiner. The referral by the agency shall address the merits of any additional arguments or evidence presented by the grievant, certify that the grievant had received a copy of all the documents in the grievance file, and include an index of the grievance file. The notice from the employee indicating that the proposed disposition does not resolve the grievance shall include:

(1) The matters or issues over which there remains disagreement.

(2) Any evidence available to the employee to support the continued request for corrective action.

(d) Appointment of a Grievance Examiner. The Director, Appeals and Grievances Staff, Office of Human Resources Management, USDA, will appoint a Grievance Examiner. The Grievance Examiner is responsible for conducting any inquiry necessary to resolve any disputes as to facts, and develop sufficient basis on which to recommend a decision. At the discretion of the Grievance Examiner, the inquiry may include but is not necessarily limited to any of the following:

(1) Review of the records and documents;

(2) Personal interview;

(3) Written inquiries;

(4) Group meetings; and

(5) Hearings.

(e) The Grievance Examiner will ensure that the grievant or designated representative is given an opportunity to review all the information on which a recommended decision will be based and to comment on it. The Grievance Examiner will send the grievant and the Agency Head a recommended decision that contains a report of findings of fact; an analysis of the issues; and a recommendation of a decision on the grievance including any corrective action that may be necessary.

(f) Final Decision. The deciding official on the final decision shall be the Agency Head. The deciding official may:

(1) Issue a final decision to the grievant within sixty (60) calendar days after receiving the request for a final decision without fact-finding by a Grievance Examiner.

(2) Accept the Grievance Examiner's recommendation as the final decision on the grievance.

§ 2063.9(f) (Con.)

(3) Grant more relief to the grievant than recommended by the Grievance Examiner.

(4) Appeal the Grievance Examiner's recommendation to the Director, Appeals and Grievances Staff, Office of Human Resources Management, USDA, within fifteen (15) calendar days after the deciding official received the recommended decision when the recommended decision can be shown to be any of the following:

(i) Contrary to law, rule, regulation, or published Agency policy.

(ii) Supported by less than substantial evidence.

(iii) A precedent of such wide and detrimental impact on the Agency that further review is necessary.

(5) The Director, Appeals and Grievances Staff, Office of Human Resources Management, USDA, will render the Department's final decision on the grievance after ensuring that the grievant has had an opportunity to review and comment on the Agency's appeal.

(6) The decision made by the Agency Head or by the Director Appeals and Grievances Staff, Office of Human Resources Management, USDA, is final.

(g) Time limits on completing processing. The complete processing of a grievance should not exceed ninety (90) calendar days (unless the parties have agreed to extend the timeframe; for example to use mediation or ADR). The ninety (90) day period begins on the date that the employee definitively indicates that an informal grievance is being initiated. "Completion of processing" means one of the following:

(1) Rejection of the grievance.

(2) Cancellation of the grievance.

(3) Resolution of the grievance to the satisfaction of the grievant.

(4) Issuance of a proposed disposition on the grievance that included the employee's rights to request further review by a Department Grievance Examiner.

(h) Elevating the grievance. If the grievant decides that the proposed disposition was not acceptable, he or she may request either of the following within ten (10) calendar days after receiving the proposed disposition:

(1) A final decision by the Agency Head without fact-finding. The Agency Head shall render the final decision.

(2) A further review of the grievance by a Grievance Examiner who will issue a recommendation to the Agency Head.

(i) Grievance Examiner's recommendation. The Agency Head shall adopt the Grievance Examiner's recommendation, grant additional relief, or exercise the right of appeal to the Director, Appeals and Grievances Staff, Office of Human Resources Management, USDA, within twenty (20) calendar days after the recommended decision.

(j) Exceeding the processing time limits. If the ninety (90) day processing period is exceeded by the Agency, the employee may request that the grievance be assigned to a Grievance Examiner by the Director, Appeals and Grievances Staff, Office of Human Resources Management, USDA. The Grievance Examiner shall:

(1) Determine the most appropriate method of resolving the grievance.

(2) Use mediation or inquiry to make a recommended decision on the grievance.

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